

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

April 19, 2007

A meeting of the Board of Environmental Protection was held on Thursday, April 19, 2007 at the Holiday Inn / Ground Round, Augusta, Maine. Virginia Plummer, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

Board: Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler

<u>Staff:</u>	Bureau of Air Quality	Bryce Sproul
	Bureau of Air Quality	Jeffery Crawford
	Bureau of Land and Water Quality	Jennifer Cayer
	Bureau of Land and Water Quality	Dennis Merrill
	Bureau of Land and Water Quality	Stephen McLaughlin
	Bureau of Land and Water Quality	Dana Murch

Others: David Littell, Commissioner
Carol Blasi, Assistant Attorney General
Cynthia S. Bertocci, BEP Executive Analyst
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 4:30 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Commissioner David Littell reported the following:

Flooding: The Department has reallocated Augusta response staff to the Southern Maine Office to aid with the increased workload from oil tank releases and wastewater treatment plant failures. The Kennebunk public treatment plant is completely under water; and as a result all contents of the treatment plant are spilling directly into the ocean. Coastal property owners are seeking DEP assistance to secure their homes from water damage from continued flooding.

Legislative: Commissioner Littell provided a list of Departmental Legislative initiatives which include the Regional Greenhouse Gas Initiative (RGGI). Governor Baldacci introduced RGGI. This consensus bill has strong support from legislative leadership. Bill provisions include: DEP/PUC implementation authority; regulation of electrical generation units 25 MW and above; and revenue from the auction of allowances would be used to fund energy efficiency projects and provide rate payer rebates. A hearing before both the Utilities Committee and the Natural Resources Committee is scheduled for April 24th.

Clean Air Act (CAA) – The Department is seeking authority to require reductions in the amounts of SO₂ and particulates in fuel for certain sources in order to implement the regional haze provisions of the Clean Air Act. Additionally, Maine will be participating in the Mid-Atlantic and Northeastern Visibility Union to develop a regional plan to achieve the goal of natural visibility, as set forth in the Clean Air Act, by 2064 Outdoor Wood Boilers: The Department is following up on a report that an individual from Skowhegan may have been hospitalized because of health impacts from an outdoor wood boiler.

Rulemaking Update:

Natural Resource Protection Act:(NRPA) Amendments to the NRPA rules (significant wildlife habitat, shorebirds and vernal pools) were heard by the Natural Resource Committee last week; a work session will follow.

In-stream flow rules: There was a unanimous vote from the Natural Resources Committee approving the consensus based approach to the rule that the Board provisionally adopted.

Maine Administrative Procedure Act: The Department proposed language that would provide for the ability to conduct less formal hearings, without full adjudicatory provisions, similar to the federal process. This proposal was reported out of the Natural Resources Committee with a unanimous vote of support.

QUESTION:

Board member Nancy Ziegler asked under what circumstances a formal hearing would be conducted.

Commissioner Littell explained that a majority of the hearings would still be conducted using the full adjudicatory process; however, the Department would like to have the option to conduct a less formal hearing similar to that of administrative law judges.. There have been circumstances where the Department wanted to conduct a hearing but a full adjudicatory proceeding was not necessary.

Brominated Flame Retardant: The bill that would ban the deca component of certain flame retardants will be back before the Natural Resources Committee for a work session next week. Although there is a significant advertising campaign currently underway, the only testimony received by the Legislature on this bill was from out-of-state entities.

Environmental Bonds: Commissioner Littell provided an overview of the bond structure: There will be a total of three packages out for voter approval in June 2007, November 2007 and June 2008. The June 2007 bond package includes funding for wastewater construction grants and SRF (State Revolving Fund) match. There are six wastewater projects that will benefit from these proposed bond packages (1) Loring-Limestone (2) Machias (3) Calais (4) Ellsworth (5) Presque isle and (6) Indian Township.

The June 2008 bond includes funds for: (1) small community grants (\$1 million) – these funds are important for addressing failed wastewater treatment systems; (2) hazardous waste cleanup (\$2 million) - although below minimum funding needed for the program, it will allow for some emergency work; (3) Municipal landfill remediation (\$800,000) – the State owes the Town of Wells approximately \$260,000.00 for work on their landfill, the remainder would be used for Bath landfill and Tri-community landfill in Fort Fairfield.

Bond funding also provides support for: drinking water program; industrial landfill remediation (\$300,000) for sites such as those in Augusta and Vassalboro associated with the Statler Tissue mill waste disposal; IFW Dam Repairs; updating of air monitoring equipment to replace federal funding cuts; and the IFW Hatchery rehab program for Grand Lake Stream.

Board member Nancy Ziegler asked about the source of funding for DEP to respond to matters like the recent flooding.

The Department does not have a specific source of emergency funding for responses to emergencies; funding comes from several different fund sources depending on the nature of the spill or environmental impact (e.g. solid waste fund, oil spill funds, hazardous waste fund or any bond funds if those are available). Long term funding is not available for emergency spill response activities.

Compact Fluorescent Light Bulbs: The Department responded to a citizen report of a broken fluorescent bulb and conducted a lummax reading for mercury (greater than 300 nanograms per cubic meter = health hazard). Department staff advised the homeowner to obtain an estimate from Clean Harbors, which was very high. The Department has developed a bulb cleanup protocol and has posted instructions on the web page [noting that clean up materials should be treated as universal waste].

Chair Plummer asked if the Department has started a public awareness campaign for recycling of these bulbs noting the packaging does not provide instructions for recycling.

Commissioner Littell explained that the Department is working with the Public Utilities Commission (PUC) to develop and publish an educational brochure.

B. COMMENTS FROM THE BEP CHAIR: Ms. Plummer updated the Board on the fifth pre-hearing conference concerning the Androscoggin River Appeal proceeding. Today's agenda lists a possible appeal of the Sixth Procedural Order. However, no appeal was submitted and the parties have resolved the matter. The resolution includes submittal of corrected direct testimony by Conservation Law Foundation. The Chair thanked board members for their time in reviewing the documentation in anticipation of an appeal.

C. EXECUTIVE ANALYST COMMENTS:

The Board's Executive Analyst noted for Board members that 6 work days are needed to consider the Androscoggin River Appeals. Allocation of time is still being discussed and a tentative hearing schedule will be forwarded to Board members. The hearing will allow for more time for direct presentation by the parties than usual because of the technical nature of the issues in dispute.

Downeast LNG: Intervenor group Save Passamaquoddy Bay, We Take Care Of Our Land, and the Fishermen Associations has filed a motion for a limited hearing to consider denial of the application based upon insufficient title, right or interest. The challenge arises out of the opposition by Canada to transit through Head Harbor Passage which calls into question the ability of the applicant to deliver the LNG to the proposed facility. This matter may be considered by the Board at a regular meeting in May.

D. BOARD CALENDAR: Reviewed

E. DEPARTMENTAL ORDERS: Reviewed

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

Board voted (7-3-0-0) to approve consent agenda item 1 as presented.

1. CHEMROCK, Thomaston – Administrative Consent Agreement (BAQ)

Board members Denis Culley, Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion. Board members Nancy Anderson, Ernest Hilton and M. Wing Goodale voted opposed.

Board voted (9-0-1-0) to approve consent agenda item 2 as presented.

2. LARRY AND GABRIELLE BEAULIEU, Madawaska – Administrative Consent Agreement and Enforcement Order (BRWM)

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, Don Guimond, M. Wing Goodale, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion. Board member Richard Gould ~~recused~~ opposed.

Board voted (9-0-1-0) to approve BEP minutes for December 7th as presented.

3. BEP Minutes December 7, 2006 (approval)

Board members Nancy Anderson, Denis Culley, Richard Gould, M. Wing Goodale, Don Guimond, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion. Board member Elizabeth Ehrenfeld abstained.

Board voted (7-0-3-0) to approve BEP minutes for December 21st as presented.

4. BEP Minutes December 21, 2006 (approval)

Board members Elizabeth Ehrenfeld, Richard Gould, M. Wing Goodale, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion. Board members Nancy Anderson, Dennis Culley and Don Guimond abstained.

Board voted (10-0-0-0) to approve BEP minutes for February 1st as presented.

5. BEP Minutes February 1, 2007 (approval)

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, Richard Gould, M. Wing Goodale, Don Guimond, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion.

Board voted (7-0-3-0) to approve BEP minutes for February 15th as presented.

6. BEP Minutes February 15, 2007 (approval)

Board members Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, M. Wing Goodale, Ernest Hilton, Virginia Plummer and Nancy Ziegler and voted to support the motion. Board members Denis Culley, Don Guimond and Matt Scott abstained.

Board voted (8-0-2-0) to approve BEP minutes for March 1st as presented.

7. BEP Minutes March 1, 2007 (approval)

Board members Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, M. Wing Goodale, Don Guimond, Ernest Hilton, Virginia Plummer and Nancy Ziegler voted to support the motion. Board members Denis Culley and Matt Scott abstained.

III. Regular Agenda

1. MUNICIPALITY OF STEUBEN / SHORELAND ZONING ORDINANCE (initiate rulemaking and post to 30-day written public comment period)

Staff: Jennifer Cayer, Bureau of Land and Water Quality

The Board voted (10-0-0-0) on a motion to post amendments to the Municipality of Steuben shoreland zoning ordinance to a 30-day written public comment period. The vote was taken pursuant to 38 M.R.S.A. sections 341-D(1-B) and 438-A(4).

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion.

2. CHAPTER 141, CONFORMITY OF GENERAL FEDERAL ACTIONS (adoption)

Staff: Jeffrey Crawford, Bureau of Air Quality

The Board voted (9-0-1-0) on a motion adopt amendments to Chapter 141, Conformity of General Federal Actions as presented. The vote was taken pursuant to 38 M.R.S.A. sections 341-D(1-B) and 585-A.

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, and Nancy Ziegler voted to support the motion. Board member Matt Scott abstained.

3. CHAPTER 529, GENERAL PERMITS FOR CERTAIN WATERWATER DISCHARGES / AMENDMENT (post to 30-day written public comment)

Staff: Denis Merrill, Bureau of Land and Water Quality

The Board voted (10-0-0-0) on a motion to post Chapter 529, General Permits for Certain Wastewater Discharges amendments to 30-day written public comment period. The vote was taken pursuant to 38 M.R.S.A. section 341-D(1-B).

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, and Nancy Ziegler voted to support the motion.

4. CHAPTER 595, STATE REVOLVING FUND / AMENDMENTS (adoption)

Staff: Stephen McLaughlin, Bureau of Land and Water Quality

The Board voted (9-1-0-0) on a motion to adopt amendments to Chapter 595 State Revolving Fund as presented. The vote was taken pursuant to 38 M.R.S.A. section 341-D(1-B) and 30-A M.R.S.A. section 5959.

Board members Nancy Anderson, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, and Nancy Ziegler voted to support the motion. Board member Denis Culley voted opposed.

5. ANDROSCOGGIN RIVER APPEAL(s) // Verso, Jay ME 0001937 and W000623-5N-F-R; Rumford Paper Company ME 0002054 and W000955-5N-G-R; Livermore Falls Publicly Owned Treatment Works ME 0100315 and W 002654-5L-G-R; and Gulf Island Pond-Deer Rips Hydro Project #L-17100-33-O-N (tentatively scheduled in the event there is an appeal of the Sixth Procedural Order)

Staff: Cynthia S. Bertocci, BEP Executive Analyst

Staff: Dana Murch, DEP Bureau of Land and Water Quality

No appeal was filed on this matter; accordingly, no vote was taken

THE BOARD RECONVENED AT APPROXIMATELY 1:00 P.M. FOR THE FOLLOWING:

6. KENNEBEC RIVER PETITIONS FOR REVOCATION, MODIFICATION OR SUSPENSION / LOCKWOOD, HYDRO-KENNEBEC, SHAWMUT AND WESTON HYDRO PROJECTS (deliberative session)

Staff: Dana Murch, Bureau of Land and Water Quality

Cynthia S. Bertocci, BEP Executive Analyst